

### **REMARKS**

The Office Action dated May 2, 2007 (the "Office Action") rejected all pending claims in this application, which include claims 1, and 3-30 and independent claims 1 and 15. Following entry of the present Response and Amendment, claims 1, and 3-30 still remain pending in this application.

In the Office Action, claims 1, and 3-30 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,099,320 to Papadopoulos (henceforth, "Papadopoulos"), in view of U.S. patent application publication No. 2005/0192954 to Gupta et al. (henceforth, "Gupta"), U.S. patent application publication No. 2002/0173999 to Griffor et al. (henceforth, "Griffor"), U.S. patent application publication No. 2002/0064766 to Cozens et al. (henceforth, "Cozens"), and U.S. patent application publication No. 2007/0061183 to Seetharaman et al. (henceforth, "Seetharaman").

In the present Response and Amendment, independent claims 1 and 15 have been amended to further clarify the patentable aspects of the invention. In particular, claim 1 has been amended to more closely recite the language of cancelled claim 2 (previously indicated as allowable by the Examiner in the prior Office Action), and claim 15 has been amended to more closely follow the language of current independent claim 1. As described in detail below, the prior art does not disclose, teach, suggest or otherwise render obvious the specific combination of features recited in the independent claims, rendering all present claims both novel and non-obvious.

The claimed embodiments of the present invention provide an advance over the prior art because they include a resources synchronization tool that provides adequate decision support capabilities that help administrators more easily manage various elements of existing training efforts so that those efforts match the changing business environment. The resources synchronization tool in particular is useful to generate reports helpful in driving strategic cost reductions (or even spurring or generating profits) by synchronizing the demand and allocation of limited resources. *See* Applicant's Specification at paragraphs [0006] through [0008]. The decision support capabilities provided by the tool enable users to effectively collect and present to decision makers key indicators upon which to base their decisions.

A key disadvantage of prior art learning solutions is that they fail to provide the ability for executives to monitor, and, in particular, to measure, performance of learning solution efforts in achieving their underlying purpose of furthering business strategies in comparison to total cost and time investment. Learning solutions can include various combinations of disparate and disjointed efforts ranging from the design, development and management of learning content, to the coordination and delivery of learning content and instruction, and to the administration of learning solution performance. Contemporary learning solutions employed in the prior art are not equipped with decision support capabilities to integrate the many disconnected and complicated processes and systems that must be implemented in an end-to-end learning solution. This inability to accurately monitor performance metrics leaves organizations and their learning services with an inability to ensure service quality, allow for accurate resource forecasts, allocate costs and provide a means to measure the learning solution's success helping the organizations meet goals and commitments. *See Spec. at par. [0012] through [0016].*

The general purpose of the invention having thus been summarized, the specific language of the claims will now be discussed. Applicant first notes that claim 1 and claim 15 have been amended herein to more closely incorporate the language of original claim 2 (now cancelled, but previously indicated as being allowable). Applicant, in its previous amendments to claim 1, had attempted to incorporate the limitations of original claim 2 into independent claim 1 while also simplifying the claim language for sake of clarity. Unfortunately, Applicant inadvertently altered the scope of the limitations incorporated from claim 2 in this simplification effort. As presently amended herein, however, both claims 1 and 15 now contain all of the limitations of original claim 2, and these limitations provide clear distinctions over the prior art as described below.

Claim 1 recites in pertinent part, *inter alia*, a resources synchronization tool in communication with a content development platform, a delivery platform, and a learning administration platform. The resources synchronization tool processes stored metrics data and information collected from the various platforms into resource utilization reports on demand. These reports may be utilized to make resource allocation decisions across said learning services providing entity. Further, claims 1 and 15 require that “said electronic delivery platform is adapted to record performance metrics during delivery of said instruction, said content development platform is adapted to record performance metrics during compilation of

instructional materials and generation of electronic learning content, and wherein said performance metrics measure aspects of said compilation, said generation, and said delivery that are utilized by said resources synchronization tool for purposes of cost allocation.” Thus, claim 1 describes a resource synchronization tool that enables collection and comparison of data involving all aspects of the learning solution, from initial content development through content delivery. Independent claim 15 contains corresponding limitations of nearly identical language, giving all independent claims similar grounds for distinguishing the prior art. Thus, all arguments provided hereafter with respect to claim 1 should be understood to apply equivalently to claim 17 unless otherwise noted.

As noted above, prior learning solutions (including those of the cited prior art) do not consider integrating these different aspects (namely, content development and content delivery) into a learning solution, let alone collecting certain data from the different platforms supporting these different aspects in a centralized and automated manner. The Office Action, unfortunately, fails to recognize these different features of the claimed inventions, and, further, mischaracterizes the teachings of the prior art references as containing disclosure of those features. In particular, the rejections to independent claims 1 and 15 contained in the Office Action allege :

Papadopoulos does not expressly teach electronic delivery platform is adapted to record performance metrics during delivery of said instruction, during compilation of instructional materials and during generation of electronic learning content and wherein said performance metrics measure aspects of said compilation, said generation, and said delivery.

However in a similar network system learning solution invention, Gupta teaches a delivery system capable of recording performance metrics (Par. 0018), the use of a database to store such information (Fig 3, Fig 4 Par. 0129), presenting the information to the teacher/supervisor (Par. 0129) wherein Gupta teaches a form of presentation to be of a report format (Par. 0013) (Claims 1-4, 15-16, 18-21, 25). The following interpretations are being made:

- *Compilation of instructional materials — the compilation of the materials that is inherently done before generating the specific materials that would be delivered to the user*
- Generation of the learning content — the generation of the specific materials that would be delivered to the user
- Delivering instruction materials — delivering the instructional materials to the user

Office Action at page 5 (emphasis supplied). First, the Applicant agrees with the Office Action that Papadopoulos fails to disclose, teach, or suggest an electronic delivery platform adapted to record performance metrics during delivery of instruction. Further, Applicant submits that Papadopoulos likewise fails to disclose teach, or suggest any type of platform adapted to perform content development functions, and thus likewise fails to disclose a platform adapted to record performance metrics during compilation of instructional materials. In contrast, claim 1 and claim 15 as amended herein require the integration of both an electronic delivery platform and a content development platform by the resources synchronization tool. These limitations, in conjunction with various other language present in those claims, clarify how the Office Action's analysis quoted above is inaccurate.

Applicant disagrees with the Office Action's italicized characterization above that since Gupta allegedly teaches a delivery system that records perform metrics during delivery of content, it inherently also teaches a "content development platform containing electronic tools for receiving input relating to the compiling of instructional materials and generating electronic learning content" as recited in Applicant's claims. The differences between a content development platform (as described in Applicant's specification with respect to element 410 of FIG. 4), which has tools that enable an instructor to compile and generate instruction materials, and an electronic delivery platform (element 430 of FIG. 4), which transmits the already compiled and generated materials and content to end users, are made apparent by Applicant's specification, are recited explicitly in Applicant's present claims, and will be readily appreciated by one skilled in the art. Even if the delivery of pre-existing materials is disclosed by Gupta, the

Examiner cannot summarily conclude that Gupta inherently (i.e., necessarily and invariably per the standard required by *In re Rijckaert*, 9 F.3d 1531, 1534 (Fed. Cir. 1993) and MPEP sec. 2112.) discloses the compilation and generation of materials and content, let alone the collection of any metrics data during the compilation and generation.

Close examination of Gupta shows that Gupta is concerned only with the electronic delivery of pre-existing content and materials to students. Any performance metrics recorded by Gupta are thus collected solely by an electronic content delivery system and relate solely to measuring data incidental to delivery of pre-existing content to students (e.g., what content to which students, electronic test scores, etc.). The specific portion of Gupta cited by the Office Action is particularly instructive of this point.

Accordingly, a method of delivering adaptive content typically includes a variety of steps that may, in certain embodiments, be executed by the typical environment summarized above and more fully described below or be stored as computer executable instructions in and/or on any suitable combination of computer-readable media. In some embodiments, user information associated with a particular user is retrieved and activity selection and topic selection information are received. A set of one or more questions is retrieved based upon the selected topic and the user information. The retrieved question set is presented to the user in the context of interacting with the selected activity. Various performance metrics are recorded during user interaction. *Some examples of these metrics are number of attempts to answer a question, whether the question was answered correctly, and reaction time between being presented the question and when the question was answered.* Progression through the selected activity can be tied to evaluation of performance metrics.

Gupta at par. [0018] (emphasis supplied). Applicant has considering the Gupta reference in full and submits that Gupta is completely silent with respect to the compilation and generation of content and materials. Thus, the Office Action's wholly improper reliance upon non-existent "inherent" disclosures of Gupta provides the only basis on the record for teaching, suggesting, or

otherwise rendering obvious the tracking of performance metrics collected by a content delivery platform.

Further, none of Papadopoulos, Gupta, or remaining prior art references of record (namely Griffor, Cozens, and Seetharaman) describe a synchronization tool for collecting performance metrics that measure aspects of compilation, generation, and delivery, and then using such metrics for the preparation of cost allocation reports that reflect all aspects of an end-to-end learning solution (development and delivery) as recited in Applicant's claims. Mere allegations by the Office Action that cost allocations are known (e.g., with reference to Cozens) or that development ratios can be tracked (e.g., with reference to Seetharaman) does not provide a basis for concluding that one of ordinary skill in the art would find obvious Applicant's recited novel systems for integrating disparate aspects of a learning solution. The fact that none of the five references of record attempt such a solution weighs against such a conclusion. The synchronization tool captures, integrates and reports performance indicators across a learning organization's key functional units (e.g., content development, delivery of content and instruction, and learning solution administration) to administrators that can make decisions from a business strategy alignment perspective. Thus, the performance indicators can include, for example, measurements of the output of a learning solution (e.g., instructional course-hours developed or delivered, hours or resources expended in development, and combinations thereof), measurements of performance level of learning efforts provided by the learning solution (e.g., student satisfaction, test and/or certification results), and measurements of the business impact of learning efforts (e.g., improvements in employee productivity following training). *See Spec.* at par. [0017] through [0021]. The performance indicator data is assembled and compiled automatically by the synchronization tool into reports that may be made available to administrators of a learning solution to create useful cost, resource usage, and learning effort success/failure reports. Where an organization's learning solution includes the use of an independent business entity according to a service level agreement, for example, the reports can focus on key metrics defined in the agreement and be utilized to track and allocate costs. *See Spec.* at par. [0024] and [0026]. The prior art fully lacks this capability, and thus does not render Applicant's claimed invention obvious.

All claims are thus allowable for the failure of the art to disclose, teach, suggest, or

Application No. 10/608,106  
Response and Amendment, filed November 2, 2007  
In response to Office Action mailed May 2, 2007

otherwise render obvious the combination of features recited in Applicant's claims.

Favorable reconsideration of the claims is requested, including removal of the rejections and the issuance of a timely Notice of Allowance.

**Conclusion**

In view of the foregoing, the Applicant respectfully requests that the Examiner reconsider the claims as amended and in light of the above remarks. A timely allowance of all of the pending claims is requested.

The present Response and Amendment has been submitted concurrently with a Transmittal document serving as a formal request for a three-month extension of time and a deposit account authorization for the fee amount due in conjunction with that request.


Applicant has not herein increased the number of claims beyond the amount for which "additional claims fees" have been previously paid. Therefore, no additional fees other than the extension of time fee are believed to be due at this time. If there are any other fees due in connection with the filing of this Response, or if the appropriate extension fee amount has not been authorized on the Transmittal document, please charge any necessary fees to Deposit Account No. 50-1349.

Considering the indication of significant allowable subject matter, the Examiner is requested to contact Applicants' undersigned attorneys by telephone to discuss any matters if the Examiner feels such discussions may expedite the progress of the present application toward allowance and avoid the need for further Office Actions.

Respectfully submitted,

Dated: November 2, 2007

**HOGAN & HARTSON LLP**  
555 13<sup>th</sup> Street, N.W.  
Washington, D.C. 20004  
Telephone: 202-637-5600  
Facsimile: 202-637-5910  
**Customer No. 30398**

By:   
Celina Jimenez Crowson  
Registration No. 40,357

Kevin G. Shaw  
Registration No. 43,110